



# RIGHTS STUFF

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## Religious Discrimination In The Workplace

In 2006, the Fellowship of Christian Centurions, a group created for law enforcement officers, sent flyers to law enforcement agencies in Wisconsin. The flyers offered officers an opportunity to talk about issues unique to their profession from a religious perspective.

Milwaukee County Sheriff David Clark was impressed with the group's mission. He met with the group's founders and then invited them to make a presentation at his department's leadership conference. All of his deputies with the rank of Sergeant or above were required to attend the presentation. At the meeting, Sheriff Clark said he would be making promotions to the rank of captain and distributed written information that included a quote from the Bible. The handout listed the qualities a leader should look for in his inner circle; one of the qualities was "person of faith."

The presenter told the deputies that they each had "a high calling and corresponding responsibility. Civil government was God's idea . . . . Fortunately, the same God who ordained authority inspired a book and sent a counselor that promise to give us guidance on how to navigate life's road."

After this meeting, Sheriff Clark scheduled additional presentations from the group at mandatory department roll calls. Some employees complained, but the Centurions nevertheless made presentations during 16 roll calls.

Two deputies sued, successfully. The Court held that the presentations

gave the appearance that Sheriff Clark, a government employee, was endorsing a specific religion. By allowing this group to repeatedly make presentations at mandatory meetings, and by underlining "people of faith" as a quality leaders should look for when building their inner circles during a discussion on promotions, he promoted the perception that he endorsed these views.

The Court noted that the presentations were heavily focused on Christianity, that they were held at mandatory meetings and that the attendees were a "captive audience of subordinates." The Court said that "We do not suggest, however, that religiously affiliated groups are always constitutionally barred from working with or speaking to government employees. Rather, we limit our analysis to the facts of this case, where an authority figure invited a Christian organization that engaged in religious proselytizing to speak on numerous occasions at mandatory government employee meetings. A reasonable observer would have been aware that the Sheriff did not extend such privileges lightly . . . . Indeed, it would be difficult to interpret the Sheriff's actions as anything but an endorsement."

Sheriff Clark argued that under the free speech clause of the first amendment, he was compelled to grant the Centurions access to his meetings. He said that he had allowed other groups such as the Alliance for Blacks in Law Enforcement and the National Latino Peace Officers Association to make presentations

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## International Olympic Committee Calls For Treatment Of Athletes In Sex Ambiguity Cases

In January, the New York Times reported that a panel of medical experts convened by the International Olympic Committee had recommended that the issue of athletes whose sex seems ambiguous be treated as a medical concern and not one of fairness in competition.

The group said that athletes who identify themselves as female but who have medical conditions that give them masculine characteristics should have their conditions diagnosed and treated. They said that the IOC should put rules in place to determine an athlete's eligibility to compete on a case-by-case basis, but they didn't suggest what those rules should be.

The IOC convened the group in the wake of the controversy over Caser Semenya, a runner from South Africa who won the 800 meters event at the world championship in Berlin in August, 2009.

After she won, other athletes complained her masculine features suggested that she should not be allowed to compete as a woman. Track and field's governing body ordered her to undergo sex testing, but the results have not been released.

Doriane Coleman, a law professor at Duke and a former elite 800-meter runner, criticized the panel's recommendations. She said, "If you start to do this you are making a joke of the fact that there are two classifications - male and female. They might as well open it up and have women competing with men."

According to the Times, masculinizing disorders are rare, but more common among elite athletes than in the rest of the population. They can be caused by an overactive adrenal gland, which results in high testosterone levels from fetal life onward.

One of the panelists, Dr. Maria New, said that "those who agree to be treated will be permitted to participate. Those who do not agree to be treated on a case-by-case basis will not be permitted." Professor Coleman said that it would not be enough to simply lower the athlete's testosterone levels after diagnosing her condition, because by that point, she has already reaped the benefits of a lifetime of heightened testosterone.

It wasn't clear what the treatment would consist of. Would the athlete's testosterone be brought down to the average range for women, or would it be sufficient to bring it down to the high range for women? How often would she have to be tested?

Article based on "IOC Panel Calls for Treatment in Sex Ambiguity Cases," by Gina Kolata, New York Times, January 20, 2010. ♦

## EEOC Suing Chicago Suburb Hilton Hotel

In late September, 2009, the US Equal Employment Opportunity Commission announced that it had filed a lawsuit against Fireside West, LLC, doing business as the Hilton in Lisle/Naperville, Illinois.

Two former hotel employees filed a complaint with the EEOC, alleging they had been discriminated against because they are Latino. The EEOC investigated and found that the executive chef at the hotel openly referred to Latino employees under his supervision as

"f \_ \_ \_ing Mexicans," "wetbacks" and "stupid Mexicans." The EEOC said it tried to reach a voluntary settlement with the hotel but when it was unable to do so, it filed the lawsuit.

The acting chairman of the EEOC, Stuart J. Ishimaru, said that "employees should never have to put up with such humiliation and ridicule on the job. If employers learn about harassment like this happening in their workplaces and simply look the other way, they will

face serious legal repercussions for doing so."

If you have questions about your rights and responsibilities under fair employment laws, including about laws that prohibit race and national origin discrimination, please contact the Bloomington Human Rights Commission. ♦



## Using TRS Does Not Make Testimony Inadmissible Hearsay

Michael Germano is a deaf man. He saw an ad from ITA for a tax advisor position and e-mailed his resume and coverletter to one of the decision-makers, Ron Sage. Sage forwarded the resume to another decision-maker, Tim Foster, to see if he was interested in interviewing Germano. Then Sage called Germano and left a voice mail message to talk about the position.

Germano returned the phone call, which was handled through the telecommunications relay service (TRS). TRS uses interpreters and keyboards so deaf people can use telephones to communicate with hearing people. Sage invited Germano to come to Illinois for an interview, saying that all expenses would be covered by ITA. He said he would call Germano back with specifics.

After the phone call, Sage talked to Foster and said that Germano's use of the TRS "would imply that Germano is hard of hearing." Foster and Sage decided not to interview Germano after all.

Sage e-mailed Germano and said that ITA had "elected to pursue other candidates whose qualifications better fit the needs of the client base." Germano e-mailed

back, asking why the interview offer had been withdrawn and whether the decision pertained to his deafness. Germano replied, "Honestly, the decision makers did discuss the topic of your hearing, but felt this was an obstacle that was not insurmountable. Simply stated, other candidates' experience better fit the needs of our clients."

Germano filed a lawsuit, claiming he had been discriminated against because of his disability. ITA said that it had chosen to hire Rick Enriquez instead of Germano and claimed Enriquez was simply more qualified. But documentation showed that Enriquez had accepted a job with ITA a week before Germano and Sage talked on the telephone.

In the litigation, ITA tried to argue that Germano could not testify about the telephone conversation, including the fact that Sage had offered him an interview, because he had not actually heard what Sage had said; the interpreter had. ITA argued that such testimony was hearsay and thus inadmissible.

The Court disagreed. The Court said that such interpreters are independent; they are not paid by

the deaf person. They have no motive to mislead; their job is to transcribe the conversation verbatim and in real time. Regulations and training greatly increase the chance that the conversation was transcribed accurately.

The Court said that there are strong policy reasons for allowing Germano's testimony. "Congress mandated the creation of a telecommunications system for persons with hearing and speech disabilities that is 'functionally equivalent' to those used by nondisabled persons. Denying the admissibility of statements made during a TRS conversation would strip those with hearing disabilities of a vital source of evidence available to hearing persons. Deaf persons could not conduct important day-to-day affairs over the phone, such as calling the bank or the doctor, with the same ability to rely on the statements made to them by the other party that is enjoyed by hearing persons. Such a result is at odds with Congress's intent to make disabled persons full and equal participants in society."

The case is Germano v. International Profit Association, Inc. 544 F3d 798 (7th Cir. 2008). ♦

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and thus he had created a "nonpublic forum." He said that he could not now refuse the Centurions the opportunity to make a presentation without violating their rights. The Court said that the sheriff's department had not created a forum "of any kind." The Court said, "The Centurions' real desire is not to

access a public space in which to hold their meetings; their interest lies in accessing the Sheriff's deputies as an audience." The Sheriff invited organizations with which he wishes to partner, and he could do that without creating any type of forum. He had no "constitutional obligation . . . to allow the religious proselytizing that

occurred" in his department.

The district court awarded attorney's fees of \$38,687 and one dollar in damages to each plaintiff. The Court of Appeals affirmed that award. The case is Milwaukee Deputy Sheriffs' Association v. Clarke, 588 F. 3d 523 (7th Cir. 2009). ♦



## **Obama Appoints Transgender Woman To Commerce Department**

In January, President Obama named Amanda Simpson to be a senior technical advisor to the Commerce Department. Simpson was deputy director in Advanced Technology Development at Raytheon Missile Systems in Tucson. A former test pilot, she transitioned from male to female while working at Raytheon and persuaded the company to add gender identity and gender expression to its equal employment opportunity policy. She is believed to be one of the first, if not the first, transgender presidential appointee to the federal government.

In 2004, Ms. Simpson was an unsuccessful candidate for the Arizona House of Representatives and in 2008, she was a delegate for Hilary Clinton to the Democratic National Convention. Very active in political and community groups, she has served on boards of two national organizations, Out & Equal and the National Center for Transgender Equality. She's also served on the board of the Southern Arizona ACLU and the Arizona Human Rights Fund. ♦

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